IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4531 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUMERSINH KAMALSINH RAJPUT (BHATI)

Versus

STATE OF GUJARAT

Appearance:

MR VAIBHAV A VYAS for Petitioner

MS HB PUNANI AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 13/04/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Rajkot City, on 26th of November, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 27th of November, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of material to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration three criminal cases registered against the petitioner for the offences punishable under Sections 380 and 457 of the Indian Penal Code for theft, and secondly, the detaining authority took into consideration two in-camera statements of witnesses, as recorded by the sponsoring authority on 14th of November, 2004 and verified by the detaining authority on 24th of November, 2004. The identity of the witnesses is not disclosed by the detaining authority, claiming privilege under Section 9(2) of the PASA Act.

3. All the three crimes came to be registered against the petitioner before Salabatpura Police Station on 29th of May, 2003, 24th of May, 2003 and on 8th of November, 2004. In each case, it was alleged that the petitioner was involved in the theft of dress materials, cloth and sarees. Some muddamal was also recovered in each of the three cases. The detaining authority considered exhaustively and thoroughly the investigation papers in all the three cases registered against the petitioner and came to the conclusion that the petitioner was a habitual offender of committing the offences of theft.

4. Out of two in-camera statements, the first witness referred to an incident of 26th of October, 2004. On that day, the witness was at this business place within the area of Salabatpura Police Station. At about 8.00 p.m. the petitioner as well as his two/three accomplices approached the witness and asked for the articles to be given to the petitioner. The petitioner earlier also taken some articles from the business place of the witness and had not paid Rs.900/- for that. The witness therefore refused to hand over those articles of his business to the petitioner. Thereupon, the petitioner started giving abuses to the witness and after holding him, inflicted three/four slaps. When witness objected to this, the petitioner instigated his accomplices, and so, all of them started beating the

witness. The witness raised shouts for help which attracted a crowd and some persons requested the petitioner not to beat the witness and allow him to go. On saying so, the petitioner and his accomplices rushed towards the crowd with weapons and started beating persons. People started running helter-skelter and attempted to conceal themselves behind vehicles, etc. The shop owners started closing their shops. The vehicle owners started running and public order was disturbed. Ultimately, the petitioner took out Rs.600/- from the pocket of the witness and after giving threat to kill, he was allowed to go. The second witness referred to an incident of 3rd of November, 2004. The witness was, after parking his vehicle, standing in the area of Salabatpura Police Station. At about 9.15, petitioner and his accomplices approached the witness and directed that the witness should take his vehicle because the petitioner wanted to transport some goods. The witness knew the activities of the petitioner, therefore, he refused. Even the witness was tempted by the petitioner through huge fare, but the witness refused. Thereupon, the petitioner got excited and started beating and abusing the witness. He instigated his accomplices as well, and they also started beating the witness. The witness raised shouts for help, which attracted a crowd. Some of them pleaded to spare the witness but the petitioner and his accomplices rushed towards the crowd, so people started running helter-skelter. The public order was disturbed. Shops in the area started closing. The traffic was disturbed. Ultimately, the petitioner took out Rs.430 from the pocket of the witness and he was allowed to go after threatening him that he will be killed if the witness attempted to file complaint, etc.

5. From the above material, the detaining authority came to the conclusion that the petitioner was engaged in anti-social and illegal activities of committing thefts and harassing innocent citizens. In view of the detaining authority, the petitioner was a dangerous person within the meaning of the PASA Act. The detaining authority concluded that the petitioner was headstrong, ferocious and violent by temperament and was in habit of administering threats to the innocent citizens and to beat them. The detaining authority concluded that the dangerous activities of the petitioner were prejudicial to the maintenance of public order and were required to be prevented forthwith. After considering the remedies available against the petitioner in general law, the detaining authority came to the conclusion that there was no other alternative except to detain the petitioner under the PASA Act. The detaining authority therefore

passed the order of detention of the petitioner, as aforesaid, which is under challenge in this petition.

6. Learned Advocate Mr.Vaibhav A Vyas for the petitioner and learned AGP Ms.Hansa B Punani for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record was also taken into consideration.

7. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether there was credible and cogent material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed.

8. To reach to the subjective satisfaction that the dangerous activities of the petitioner were prejudicial to the maintenance of public order, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of breach of law and order and the cases falling within the category of breach of public order.

9. Referring to the three criminal cases filed against the petitioner under the Indian Penal Code for committing theft through the investigation papers as placed on record, it is found that those three cases came to be filed against the detenu because he was found during investigation to have committed offences of theft. The act which is alleged in the criminal cases is offence under the Penal Statute of the country. However, merely filing cases under the Penal statute of the country, would not result in a conclusion that the activities of the petitioner were disturbing the public order. At the most, the petitioner might have committed breach of the provisions of law, for which the petitioner may be tried and punished if found guilty, but surely the act constituting the offence cannot be said to have affected the even tempo of the life of the community nor the activities revealed through the investigating papers indicate that in the activities alleged through these cases, society at large or section of the society or

community or particular community was involved. Therefore, these cases may be instances of breach of law and order, but cannot be branded as activities disturbing the public order.

10. Further while referring to the in-camera statements, as recorded by the sponsoring authority and verified by the detaining authority, it must be borne in mind that while reaching to the subjective satisfaction about the alleged activities of the petitioner, it would be necessary for the detaining authority to consider fall out, reach and impact of the activities of the petitioner and thereafter to come to the conclusion that such activities were capable of disturbing the public order. Two incidents, as narrated through in-camera statements, reveal individual disputes than to involve society at large or even disturbing the even tempo of the life of the community. The potentiality of the act alleged through in-camera statements, even from the bare reading of them, are not capable of disturbing the even tempo of life of the community or society at large or section of the society. No widespread danger or harm to the society could be inferred from the statements of the witnesses. Therefore, even after taking them on their face value, those incidents, may be instances of disturbing law and order, which can be taken care of by general law and by no stretch of reasoning, such activities can be branded to be disturbing the public order.

11. In the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH 393. The Division Bench of this Court after considering many decisions of the Apex Court, observed in paras 20 and 21 as under :

"20 The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and Two. Devaki vs. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly in Two. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was highlighted. It was also alleged that people were scared and had run helter-skelter. In spite of such allegations, the Supreme Court held that they were not cases of maintenance of public

order and hence, no action of preventive detention was uncalled for.

21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention, could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again in Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and Others, 1995 (2) GLR 1268 (Sc), the Supreme Court considered the relevant decisions on point including the decisions in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

12. The present set of facts are squarely covered by the above decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki (supra) and therefore the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

13. In the result, the petition is allowed. The order passed by Commissioner of Police, Rajkot City, on 26th of November, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu- Sumersinh Kamalsinh Rajput (Bhati) is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)